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06                   UNITED STATES DISTRICT COURT  
07                   WESTERN DISTRICT OF WASHINGTON  
08                   AT SEATTLE

09                   MELVIN JERIAL JORDAN,                   ) Case No. C05-1471-MJP-JPD  
10   ) )  
11   Petitioner,   ) )  
12   ) )  
13   v.   ) REPORT AND RECOMMENDATION  
14   ) )  
15   UNITED STATES OF AMERICA,                                 ) )  
16   ) )  
17   Respondent.   ) )  
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14   INTRODUCTION AND SUMMARY CONCLUSION

15   Petitioner Melvin Jerial Jordan is an inmate at the Federal Correctional Institution in  
16 Lompoc, California who has filed a “request for relief” pursuant to 18 U.S.C. §§ 3742(a)(1)  
17 and (a)(2) that seeks to correct an alleged misapplication of the United States Sentencing  
18 Guidelines in connection with his 2002 federal sentence. Respondent has filed a response  
19 opposing the request. Following a careful review of the parties’ pleadings, supporting  
20 documents, and the record, the Court recommends that petitioner’s request be denied.

21   FACTS

22   On May 20, 2002, petitioner entered into a plea agreement in which he pleaded guilty  
23 to conspiracy to distribute marijuana and conspiracy to engage in money laundering. Case No.  
24 CR02-51, Dkt. Nos. 48, 61. On May 15, 2003, petitioner was sentenced to 110 months in  
25 prison, followed by five years of supervised release. Dkt. Nos. 106-07. Petitioner did not  
26 appeal his sentence.

01 On August 17, 2005, petitioner filed a “request for relief pursuant to 18 U.S.C. §  
 02 3742(a)(1) (2).” Case No. C05-1471, Dkt. No. 1. Relying upon *United States v. Buter*, 229  
 03 F.3d 1077 (11th Cir. 2000), he appears to argue that the Court misapplied the United States  
 04 Sentencing Guidelines by effectively double-counting prior sentences that ran concurrently.  
 05 Dkt. No. 1. Petitioner argues that, had the Court not separately counted those sentences, his  
 06 current sentence would be shorter. *Id.*

07 Petitioner, however, is not entitled to relief under 18 U.S.C. §§ 3742(a)(1) and (a)(2).  
 08 Under those provisions “A defendant may file a notice of appeal in the district court for review  
 09 of an otherwise final sentence if the sentence . . . was imposed in violation of law; [or] . . . was  
 10 imposed as a result of an incorrect application of the sentencing guidelines . . . .” 18 U.S.C. §§  
 11 3742(a)(1) and (a)(2). By its terms, this provision does not grant the district court jurisdiction  
 12 to review petitioner’s final sentence. See *United States v. Auman*, 8 F.3d 1268, 1271 (8th Cir.  
 13 1993). Rather, 28 U.S.C. § 2255 is generally considered to be the exclusive method by which  
 14 prisoners may challenge the legality of a federal sentence in district court. *Ivy v. Pontesso*, 328  
 15 F.3d 1057, 1059 (9th Cir. 2003) (noting that 28 U.S.C. § 2241 is proper in certain  
 16 circumstances) (internal citations omitted). Thus, the Court lacks the jurisdiction under 18  
 17 U.S.C. §§ 3742(a)(1) and (a)(2) to consider petitioner’s request.

18 Although the Court may recharacterize petitioner’s request as a § 2255 motion, such a  
 19 recharacterization is inappropriate because the motion would be barred by the statute of  
 20 limitations. A one-year statute of limitations applies to motions brought pursuant to 28 U.S.C  
 21 § 2255. That deadline runs from the latest of “the date on which the judgment of conviction  
 22 becomes final; [or] . . . the date on which the right asserted was initially recognized by the  
 23 Supreme Court, if that right has been newly recognized by the Supreme Court and made  
 24 retroactively applicable to cases on collateral review. . . .” 28 U.S.C. § 2255 ¶ 6.

25 In this case, petitioner’s judgment and sentence were issued on May 15, 2003, and he  
 26 filed no direct appeal. Case No. CR02-51, Dkt. Nos. 106-107. His conviction therefore  
 became final ten days later, on or about May 29, 2003. Fed. R. App. P. 4; *United States v.*

01 Schwartz, 274 F.3d 1220, 1223 (9th Cir. 2001) (indicating that convictions become final ten  
02 days after issuance of judgment and sentence for petitioners who file no direct appeal).  
03 Petitioner's deadline for filing a § 2255 motion therefore expired on or about May 29, 2004.  
04 The Court, however, did not receive petitioner's request until August 17, 2005, more than a  
05 year after the deadline had passed. Additionally, the Eleventh Circuit case upon which  
06 petitioner relies, *United States v. Buter*, is not a Supreme Court case and is therefore not  
07 appropriate for calculating the statute of limitations provision of ¶ 6(3). See *Dodd v. United*  
08 *States*, 125 S. Ct. 2478, 2481-82 (2005) (noting that calculation of deadlines under ¶ 6(3)  
09 requires reference to decisions of the Supreme Court). Thus, even if the Court were to  
10 recharacterize petitioner's request as a § 2255 motion, it would be denied as untimely.

11 CONCLUSION

12 For the reasons set forth above, petitioner's request for relief should be denied. A  
13 proposed order accompanies this Report and Recommendation.

14 DATED this 24th day of February, 2006.

15   
16 JAMES P. DONOHUE  
17 United States Magistrate Judge  
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